IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/02/2004

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THE HONOURABLE MR JUSTICE P. SATHASIVAM
AND
THE HONOURABLE MR JUSTICE S.R. SINGHARAVELU

C.M.A. NO.604 OF 1996

M/s. A.N. Srinivasaka Nadar & Sons
45-A, Acharappan Street
Madras 600 001. ... Appellant

-Vs-

Union of India
owning Southern Railways
rep. by the General Manager
Madras - 3. ... Respondent

Civil Miscellaneous Appeal against the order dated 5.10.1994 made in O.A.I.No.245/1993 on the file of Railways Claims Tribunal, Madras Bench.

! For Appellant : Mr. T. Raja Mohan

^ For Respondent : Mr. V.G. Suresh Kumar

:J U D G M E N T

(Judgment of the Court was delivered by P. Sathasivam, J.)

The applicant in O.A.I.No.245/1993 on the file of the Railway Claims Tribunal, Madras Bench is the appellant in the above appeal. The applicant filed an application under Section 13(1)(a)(i) of the Railway Claims Tribunal Act, 1987 claiming compensation of Rs.2,095/= from the respondent-Southern Railways. It is the case of the petitioner that 141 bags of gram were sent from Bina to Royapuram under railway risk under the railway receipt, Ex.B1. On arrival of the goods at the destination, out of 141 bags, only 138 bags were delivered, resulting in short delivery of three bags, in respect of which the respondent, the destination railway authorities issued Gate Pass Ex.A1 stating on its reverse that "unloaded and delivered 138 bags gram only" and a further endorsement that "one bag of gunny torn and loose RF 71 kgs against 100 kgs of sound one". The petitioner made a claim for short delivery of three bags and shortage of 29 kgs under Section 106 of the Railways Act, 1989 on the respondent under the original of Ex.A2, which was repudiated by the respondent under Ex.A3 giving rise to the application before the Railway Claims Tribunal claiming compensation of Rs.2,095/= from the respondent. The

respondent-Railway contested the application.

2. Before the tribunal, no oral evidence was let in on both sides. However, on the side of the petitioner, Exs.A1 to A4 were marked and on the side of the respondent-Railways, Exs.B1 to B3 were marked. The Claims Tribunal after holding that in the absence of an affidavit or other documentary evidence regarding loading of 141 bags of gram based on Ex.B3, dismissed the said application. Hence, the present appeal.

3. Heard the learned counsel for the appellant as well as the respondent.

4. For convenience, we shall record the name of the parties as arrayed before the Claims Tribunal. It is the specific case of the petitioner that 141 bags of gram were booked at Bina to be delivered at Royapuram. Railway receipt which has been mentioned as Ex.B1 on the side of the Railways shows that 141 bags of gram were booked at Bina and the same to be transferred to Royapuram. There is no dispute that Ex.B1 is a railway receipt issued by the officer concerned. It is further seen that at the destination point namely, at Royapuram, petitioner was delivered with only 138 bags and there is shortage of bags. The Claims Tribunal relying on Ex.B2 which shows that the wagon in question reached the destination with both sides seal intact "NIKOLO" reverse that both sides seal were intact. In the absence of any information either in Ex.B2 or explanation by the person concerned or officer, who is competent to explain, we are of the view that the same cannot be accepted. It is also relevant to note that Section 65 of the Railways Act, 1989 which speaks about railway receipt. Sub-section 2 of Section 65 shows that a railway receipt is a prima facie evidence of the weight and the number of packages stated therein. The relevant provision reads as under:-

" 2. A Railway receipt shall be prima facie evidence of the weight and the number of packages stated therein:
Provided that in the case of a consignment in wagon-load or train load and the weight or the number of packages is not checked by a railway servant authorised in this behalf, and a statement to that effect is recorded in such railway receipt by him, the burden of proving the weight or, as the case may be, the number of packages stated therein shall lie on the consignor, the consignee or the endorsee."

5. Though a railway receipt is a prima facie evidence of the weight and the number of packages as per the proviso, if there is evidence to show that the weight or the number of packages is not checked by railway servant authorised and a statement to that effect is not recorded in the railway receipt itself, then the burden of proving the weight lies on the railways. We have already referred to the fact that no one has been examined on the side of the railway to speak about the fact that the packages were checked or the statement recorded in Ex.B1 is not correct.
6. Even though in Ex.B2 there is a reference to the word "NIKOLO", as discussed above, the same was not explained by the person concerned. Inasmuch as the two conditions provided in the proviso has not been fulfilled, we have to accept the railway receipt Ex.B1 as a prima facie

evidence with reference to the weight and number of packages stated therein as correct. We also verified Ex.B1 railway receipt. Except stating that 141 bags of gram received, there is no other endorsement by anyone including the officer concerned. In such circumstance, we are of the view that the Claims Tribunal failed to consider Ex.B1 and on erroneous interpretation of Ex.B2 rejected the claim of the petitioner.

7. There is no serious dispute with regard to the value of three bags namely Rs.2,095/= as claimed by the petitioner. Accordingly, the petitioner is entitled to the said amount. The respondent-Railway is directed to pay the amount of Rs.2,095/= with interest at 9%, from the date of petition till the date of payment, within a period of six weeks from the date of receipt of a copy of this order.

8. The Civil Miscellaneous Appeal is allowed to this extent. No costs.

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To
1. The Registrar
The Railway Claims Tribunal
Madras.
2. The Record Keeper
V.R. Section
High Court
Madras.

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